

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NATOMAS UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012100494

ORDER DENYING DISTRICT'S
MOTION TO DISMISS

On October 12, 2012, the Natomas Unified School District (District) filed a motion to dismiss Student's due process hearing request (complaint) on the ground it seeks to enforce a prior settlement agreement and is outside the jurisdiction of the Office of Administrative Hearings (OAH). No opposition has been received.

APPLICABLE LAW

Parents have the right to request a due process hearing requests under the Individuals with Disabilities Education Act (IDEA) "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the IDEA.

This limited jurisdiction does not include jurisdiction over claims alleging only a school district's failure to comply with a settlement agreement. Issues pertaining to compliance are beyond OAH's jurisdiction, as "the proper avenue to enforce SEHO orders" and settlement agreements is the California Department of Education's compliance complaint procedure (Cal. Code Regs., tit. 5, § 4600, et. seq.). (See *Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1030.)

However, more recently, in *Pedraza v. Alameda Unified Sch. Dist.* (D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541, the United States District Court for the Northern District of California held that OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education (FAPE) as a result of a violation of a settlement agreement, as opposed to "merely a breach" of the settlement agreement, which would otherwise be addressed by the California Department of Education's compliance complaint procedure.

DISCUSSION

Student's complaint raises one claim, that District did not honor an agreement with Student to provide speech services within an agreed upon timeframe. However, a review of the final settlement agreement between Student and District, dated September 19, 2012 and attached to District's motion as Exhibit A (Settlement Agreement), establishes that the agreed upon services were part of the District's FAPE obligation for the 2012-2013 school year.

The Settlement Agreement provides, at Section 2, that "[t]his Agreement satisfies the District's obligation to make a FAPE available to Student from the date of execution of this Agreement and continuing through the end of the 2012-2013 school year, as long as the District implements this Agreement." Therefore, by alleging that District has not provided agreed upon services pursuant to the terms of the Settlement Agreement, Student's complaint alleges a denial of FAPE, which claim is within the jurisdiction of OAH.

District's motion to dismiss is denied.

IT IS SO ORDERED.

Dated: October 23, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings